

# **TOWN OF COTTESLOE**



## **SPECIAL FULL COUNCIL MEETING MINUTES**

**SPECIAL MEETING OF COUNCIL  
HELD IN THE  
WAR MEMORIAL TOWN HALL, COTTESLOE CIVIC CENTRE  
109 BROOME STREET, COTTESLOE  
7.00 PM, WEDNESDAY, 22 DECEMBER, 2004**

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**1 DECLARATION OF MEETING OPENING/ANNOUNCEMENT OF VISITORS**

The Mayor announced the meeting opened at 7.13pm.

**2 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)****Elected Members In Attendance**

Mayor Robert Rowell (Chairperson)  
Cr Daniel Cunningham  
Cr Arthur Furlong  
Cr Peter Jeanes  
Cr Bryan Miller  
Cr Kevin Morgan  
Cr William Robertson  
Cr Anthony Sheppard  
Cr Victor Strzina  
Cr John Utting  
Cr Jack Walsh

**Officers in Attendance**

Mr Stephen Tindale	Chief Executive Officer
Mr Simon Bain	Acting Manager Development Services
Mrs Jodie Peers	Executive Assistant

**Apologies**

Nil

**Leave of Absence (previously approved)**

Nil

**3 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE**

Nil.

**COUNCILLOR STATEMENT**

Cr Sheppard made a statement to the meeting. He had declared a financial interest at previous meetings where this matter had been on the agenda. Over the past week, facts have emerged that indicate that he does not have a financial interest in the matter.

The value of his property in Marine Parade will not and cannot be impacted upon by the proposed hotel development. The absence of a financial interest

is based on legal advice which he has received, along with advice from the Chief Executive Officer, based on the facts as he understands them.

#### **4 PUBLIC QUESTION TIME**

Mr J Hammond, 36 Railway Street

Mr Hammond asked the Mayor that if the vote was tied tonight, would the Mayor exercise his vote for the status quo (i.e. against the application).

The Mayor advised that if a casting vote situation arose he will vote for the status quo.

Mr Hammond stated that Councillors should be honourable and true to the electorate and honour the wishes of the majority of the community. Council should listen to the overwhelming sentiment of the Cottesloe community. People do not want high rise buildings on our pristine, beautiful coastline which could be spoilt forever.

Mrs R Harms, 37 Elizabeth Street

Mrs Harms spoke on conflicts of interest and in particular the disclosure of financial interests and declarations of impartiality. Councillors must declare financial interests or make declarations of impartiality. She questioned why Cr Furlong had not declared an interest as he lives 350 metres from the Cottesloe Beach Hotel.

Cr Furlong replied that he has not declared an interest as he does not have an interest to declare.

Ms K Newton-Wordsworth, 12/22 John Street

How did Mayor Rowell and the other Councillors get to be sitting at this Council meeting? Who are they representing?

She also noted the statement made by a Councillor at a previous meeting that it was stacked.

Ms Newton-Wordsworth has written to the paper in relation to holding a referendum on this matter. There is still a village atmosphere in Cottesloe – as reflected in the objectives of the Council. She was recently in Miami and was disgusted to see the high rise developments along the beach. Council needs to take a stand, not just for the residents of Cottesloe, but for the people that come here from all over the world. You have a responsibility to represent the majority otherwise we are fooling ourselves that we live in a democracy.

Mr CPM Peech, 103 & 103A Broome Street

In Africa I have seen property owners denied their rights. In Cottesloe such things cannot happen or can they? Council must not give itself massive legal discretion to approve development against the will of the ratepayers. Council has obtained two QC opinions, and they conflict. The first said “no”. The second gave Council “discretion”. Why did Council seek a second opinion? Why did Council decide that the applicant’s opinion should decide the conflict?

**5 APPLICATIONS FOR LEAVE OF ABSENCE**

Nil.

**6 CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

Nil.

**7 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil.

**8 PUBLIC STATEMENT TIME**

Tom Atkinson, 2/2 Gadston Street

Mr Atkinson stated that Council really should not be passing this application as it is far in excess of the town planning scheme standards. If Council wishes to pass the development it must be rejected tonight, then proceed the correct way with a town planning scheme amendment.

Ms Caroline Marshall, 17 Brown Street, Claremont

As the owner of 6-8 John Street, Cottesloe, their property shares a common boundary with the applicant. The applicant is proposing a parapet wall on the common boundary up to 12 metres high. Ms Marshall said that she cannot understand why there would be consideration of something that is well over the plot ratio limits, is oversized and over height. The proposal overpowers the current building. There may be a better development solution. Please don't support this development application.

Ms M Ewing, 11 Rosser Street

Ms Ewing stated that as a former Councillor she understands that in order to vary the existing town planning scheme requirements and to increase the height limit there must be a gain to the community. Ms Ewing asked what demonstrable gain is there from increasing the height of what is now a heritage listed building that is in good condition and does not overshadow the beach. It must be demonstrated to the community what the advantages are.

Miss E Svanberg, 71 John Street

Miss Svanberg stated that she is against the Cottesloe Beach Hotel having more than three storeys. She is a fourth generation Cottesloe resident. When she grows up she does not want high rise all around her. She has viewed the plan at the library and it is ugly. So for the sake of me and my generation please go against this dreadful business.

Mr C Wiggins, John Street

Mr Wiggins, speaking on behalf of the SOS committee, stated that he realises Council is under pressure from Multiplex to approve the project tonight. However there is an extremely strong public sentiment to oppose the project and the developer has been unable to demonstrate any major public support for proposal. On the agenda there are a number of unclear matters to be

settled relating to overshadowing and its use as hotel or for residential purposes. Mr Wiggins stated that there has been no consideration as to how this development would fit into a long term plan for Cottesloe. A 3D model, as previously promised, has not been provided.

Far more time is required for consultation, consideration and negotiation. The developer will not suffer from any more time required by Council to consider the project. If Council were to approve it tonight they would lose all control over the development to Multiplex.

Mr I Woodhill, 23A Grant Street

Mr Woodhill thanked Council for the opportunity to speak. He stated that in this room 90% and more would not be against development as such, but only development that fits within certain guidelines. Option B takes some reading and it goes very much against this development. The development goes above the 12 metre height limit, is too bulky and essentially destroys a beautiful heritage building.

Mr Woodhill asked Councillors to consider what the community has said tonight and what the majority of the people wish to see stay in place. Option B is the only option.

Mr R Fitzhardinge 42 Grant Street

Mr Fitzhardinge stated that there are two things that impact on the decision to be made at tonight's meeting – the Cottesloe beach lifestyle and representative democracy. The Multiplex proposal will add nothing to the lifestyle and instead will detract from it. Long-term rental apartments do not add vitality to the neighbourhood. It is short-term accommodation that brings people in. Mr Fitzhardinge compared Cottesloe to Manly and its developments.

Mr P Wilkes, 46 Griver Street

Mr Wilkes said that he and two other Cottesloe residents met with a Multiplex representative for the CBH project recently. He clearly indicated that it was Multiplex's intention to sell the residential units and indicated average price and maximum price for the units. A few quick sums on the purchase price for the hotel, the cost of redevelopment and the likely return on selling the units shows a potential profit of approximately \$25 million. This is clearly their preferred funding mechanism rather than letting out rooms.

When asked what benefits there were for the community in the proposal the answer was – improved crowd control, some enlargement in indoor eating space and potential softening of the Marine Parade frontage with plants and lighting. These are hardly worthwhile benefits to offset the huge concessions being sought by Multiplex.

Mr Wilkes urged any Councillors considering supporting Multiplex to think again and vote with the community - not against it. We have heard no valid reasons to support it and many why it should be rejected. Some of these are listed in pages 25 and 26 of tonight's agenda and in the agenda papers for a recent Design Advisory Panel meeting.

Supporting Multiplex on this proposal would be the start of more unduly high developments in Cottesloe, including the Ocean Beach Hotel. This community supports the 12 metre height limit so as to prevent inappropriate development. He wants Council to reflect the widely held community view.

Mr P Rattigan, 9B Grant Street

Spoke on behalf of his family. They approached the development proposal with an open mind, however after viewing the plans they totally oppose the proposal. The Heritage Council only looks at the existing hotel. The WA Planning Commission only looks at the matter at a regional level and not a local level. The proposal doesn't look at the impact on the beach and Cottesloe. Anti-social conduct is not remedied by way of the proposed building. That is in the hands of the owners of the building now.

Mr Rattigan understood the pressures that Council is under, but this development has only negative results for Cottesloe. Mr Rattigan urged Councillors to reject the proposal.

Mr A James, 6 Deane street

Mr James has been a Cottesloe resident since 1979. He is against the proposal as it contravenes the current town planning scheme requirements and damages the amenity of the area. The beach is why people come to Cottesloe and needs to be preserved. Mr James urged Councillors to vote against the application.

Mr M Huston, PO Box 400, Cottesloe

Mr Huston read out provisions of the Local Government Act relating to:

- a framework for the administration and financial management of local government,
- better decision making, greater participation and greater accountability of local government to their communities,
- local government as a body corporate,
- the Mayor providing leadership and guidance to the community and speaking on behalf of the community, and
- Councillors representing the interests of the residents.

Mr Huston stated that in considering this application he has tried to understand the decision to be made. The community does not want a bargain entry ticket to Multiplex, or a \$12 million parking giveaway, or a building that shades a portion of the beach everyday of the year. He asked Councillors to consider these things seriously and exercise no discretion on the matter. There was only one route under the Act for Council to take and that was to oppose the application.

The Mayor stated that when Council receives a development application, it must consider it on its merits. Ordinarily Council could have refused the development application on the grounds that it did not comply with the development standards contained in Town Planning Scheme No. 2. In this

instance however there was a right to the exercise of discretion in relation to heritage listed buildings.

The Heritage Council, WA Planning Commission and the government have stated that they support the application. Councillors have been provided with all the information on the application. The process has been handled appropriately and correctly in anticipation of an appeal situation.

The major consideration is that Council must do what is best for Cottesloe.

### **DECLARATION OF INTEREST**

Cr Strzina made a declaration of interest in as much as his son, who lives at home, is working on a part time basis during the holidays for Multiplex. Cr Strzina does not receive any of his son's income. It is for his son's personal use only. Cr Strzina requested that he be allowed to participate in the debate and vote on the matter

Cr Strzina left the meeting.

### **COUNCIL RESOLUTION**

Moved Cr Miller, seconded Cr Morgan

**That the interest of Cr Strzina be deemed to be so trivial or insignificant as to be unlikely to influence Cr Strzina's conduct in relation to the matter and that he be allowed to participate in the debate and vote on the matter.**

Carried 10/0

Cr Strzina returned to the meeting.

## **9 PETITIONS/DEPUTATIONS/PRESENTATIONS**

Cr Morgan presented a petition with 806 signatures.

He read the following prayer aloud:

*"We the undersigned hereby petition the Town of Cottesloe not to allow any building development in the Marine Parade precinct (west of Broome Street) which exceeds a height of 12 metres above natural ground level".*

### **COUNCIL RESOLUTION**

Moved Cr Morgan, seconded Cr Walsh

**That the petition be accepted and be dealt with by the full Council.**

Carried 11/0



## 10 REPORT OF OFFICERS

### 10.1 COTTESLOE BEACH HOTEL - DEVELOPMENT APPLICATION

<b>File No:</b>	<b>104 Marine Parade</b>
<b>Authors:</b>	<b>Mr Stephen Tindale &amp; Mr Simon Bain</b>
<b>Author Disclosure of Interest:</b>	<b>Nil</b>
<b>Report Date:</b>	<b>17 December, 2004</b>
<b>Senior Officer:</b>	<b>Mr Stephen Tindale</b>

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#### SUMMARY

A revised application has been received for additions and alterations to the Cottesloe Beach Hotel. It is proposed to demolish part of the existing hotel and provide 38 hotel suites to the rear of the remaining section of the hotel.

The development application seeks a substantial variation to the Town Planning Scheme provisions on the basis that the proposed development involves work in relation to the 1937 brick rendered façade of the hotel.

As the façade is listed on Schedule 1 of the Town Planning Scheme text, Part VI of the Town Planning Scheme text gives Council the discretion to vary the requirements and standards of the Town Planning Scheme text. In deciding whether to exercise that discretion or not, Council is required to consider the consequences and implications in exercising that discretion in terms of its impact on the amenity of the locality.

Two alternative recommendations are made for Council's consideration.

#### PROPOSAL

The revised proposal involves the demolition of the rear section of the hotel. It is proposed to develop the site with:

- (i) a basement car parking area (87 cars), including service and staff facilities;
- (ii) 6 storey addition of 38 hotel suites (3 storeys above the existing hotel section);
- (iii) modifications to the existing bar and café;
- (iv) total of 77 bays for hotel guests and 10 for visitors.
- (v) retention of the John Street façade and roof lines, including canopy, back 1m;
- (vi) retention of the ridgelines of the original building making it 0.6m higher;
- (vii) 0.9m lowering of the rear (eastern) parapet;
- (viii) reduction in the hotel floor area;
- (ix) 90% site cover;
- (x) re-location of the administration further to the east.

It has been confirmed in writing by the applicant (Attachment 1 to the agenda) that the proposed suites are hotel suites and are not permanent residential units, which are prohibited in the Hotel zone.

The proposal does not include:

- al fresco dining in Warnham Road and Marine Parade;
- changes to the road pavements in Warnham Road, Marine Parade and John Street.

### **STATUTORY ENVIRONMENT**

- Town of Cottesloe Town Planning Scheme No 2
- Metropolitan Region Scheme
- Heritage of Western Australia Act 1990

Council is required to issue three separate planning approvals. Approvals are required to be issued under:

- Part VI of the Town of Cottesloe Town Planning Scheme No. 2;
- Part VII of the Town of Cottesloe Town Planning Scheme No. 2; and
- the Metropolitan Region Scheme, acting under delegated authority from the Western Australian Planning Commission.

The site was listed on the State Register of Heritage Places on the 12<sup>th</sup> November, 2004.

The site is also in close proximity to the Cottesloe Beach Precinct which was interim listed on the State Register of Heritage Places on the 23<sup>rd</sup> November, 2004.

Council cannot make a meaningful determination on the application under Town Planning Scheme No. 2 or the Metropolitan Region Scheme until the advice of Heritage Council has been received and considered by Council.

The Heritage Council has no objection to the development proposal subject to the fulfilment of a number of conditions (Attachment 2 to the agenda).

### **POLICY IMPLICATIONS**

N/A.

### **HERITAGE LISTING**

- |                                     |            |
|-------------------------------------|------------|
| • State Register of Heritage Places | Permanent  |
| • Town Planning Scheme No 2         | Schedule 1 |
| • Town Planning Scheme Policy No 12 | N/A        |
| • Draft Heritage Strategy Report    | N/A        |
| • Municipal Inventory               | Category 4 |
| • National Trust                    | N/A        |

### **APPLICATION ASSESSMENT**

#### **AREAS OF NON-COMPLIANCE**

These are discussed in the report.

**STRATEGIC IMPLICATIONS**

N/A.

**FINANCIAL IMPLICATIONS**

N/A.

**CONSULTATION**

## REFERRAL

**Internal**

- Building
- Engineering
- Health
- Design Advisory Panel

**External**

- Heritage Council of Western Australia
- Department for Planning and Infrastructure
- Ken Adam
- Ecotect - Architects
- GHD Management Engineering Environment
- Department of Land Information
- Oldfield Knott Architects Pty Ltd
- Cox Architects
- Western Australian Planning Commission
- Multiplex Developments (WA) Pty Ltd

## ADVERTISING OF PROPOSAL

The application was advertised as per the requirements of Town of Cottesloe Town Planning Scheme No 2.

The advertising consisted of:

- Sign on site;
- Advertisement in paper; and
- 440 letters sent to surrounding property owners in John, Broome, Marmion, Jarrad and Forrest Streets, De Bernales Walk, Marine Parade, Overton Gardens and Warnham Road

**Submissions**

477 submissions were received. These are summarised below. Typical comments on each of the identified issues are shown on Attachment 3 to the agenda.

For and Against

Support the Development Application	258
Oppose the Development Application	200

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Qualified support or opposition	19
Total number of submissions received:	477

### Issues Raised

#### **Design:**

Height is okay	149
Good design	147
Out of character	99
An undesirable precedent	42
Too high	30
Adverse alfresco impacts	18
Too bulky	10
Adverse impacts on John Street	9

#### **Planning constraints:**

Exceeds 12 metre height	144
Overshadowing	26
Undesirably residential	22
Obstruction of views	17
Insufficient parking	15
No discretion applies re heritage provisions	14
Exceeds plot ratio	12
Generally contravenes town planning scheme	11
Exceeds site coverage	9
Overlooking	9
Density is too high	5

#### **Social Costs/Benefits**

Enhance public amenity	192
Beer garden closure	78
Reduced nuisances	36
Lack of public amenities	26
Traffic congestion	18
Anti social behaviour	6
Reduced bar area	5
Too noisy	4
Construction too disruptive	2
Litter	1

The “tear off” submissions received concerning the 12 metre height limit have not been included because these were not part of the formal advertising.

### **BACKGROUND**

In July 2003, the applicant presented a series of development options for the Cottesloe Beach Hotel site to Council’s Design Advisory Panel seeking feedback as to the appropriate form and scale of development to be undertaken on the site.

From July to September 2003, Council conducted a series of workshops with a view to incorporating *Cottesloe Beachfront Development Objectives* into proposed Town Planning Scheme No.3.

In September 2003, the owner sought the support of the Minister for Heritage by way of an order under section 38 of the Heritage Act to expedite the use of the site for residential units. The Minister's office subsequently advised the owner that such a proposal would need in-principle support from the Town of Cottesloe before it could be seriously considered.

The applicant did not seek in-principle support.

In December 2003, the applicant held a series of open days seeking community feedback on a proposal for the site prior to the preparation of a formal development application.

The Town of Cottesloe sought legal advice from Mr Chris Edmunds (QC) in relation to the application of Part VI of the Town Planning Scheme text. That advice indicated that Council could not grant approval to the development as two approvals were required under the Town Planning Scheme text – Part VI and VII. As there was no discretion to vary the Scheme provisions under Part VII, the legal view was that Council was required to refuse the application (Attachment 4 to the agenda).

A development application was submitted to Council in May 2004 which was a modified version of the December 2003 proposal. This application was subsequently withdrawn.

The Cottesloe Town Council continued to develop its *Cottesloe Beachfront Development Objectives* by way of two public information sessions and a public submission period. The September 2004 special meeting of Council adopted the *Cottesloe Beachfront Development Objectives* (Attachment 5 to the agenda) following the closure of a public submission period.

A revised development application was lodged during September 2004. Additional information was submitted and the application was subsequently deemed to be complete on October 4<sup>th</sup> 2004.

The documentation was referred to the Heritage Council and the WA Planning Commission for their advice as required under the provisions of the Heritage Act and the Metropolitan Region Scheme.

A second legal opinion was sought from Mr Ken Martin (QC) as Mr Chris Edmunds was taking leave for 12 months and would not be available to represent Council in the event of an appeal being made to the Town Planning Appeal Tribunal. Mr Martin, having the benefit of Mr Edmunds opinion, provided his advice in relation to the interpretation of Part VI of the Town Planning Scheme Text. (Attachment 6 to the agenda).

His opinion, which is at odds with that of Mr Edmunds, indicates that there is a relationship between the façade and the proposed development and that it is

therefore open to Council to exercise discretion in the application of town planning controls in relation to the proposed development.

On the 23<sup>rd</sup> November 2004 the Heritage Council recommended refusal of the development application on heritage grounds (Attachment 7 to the agenda).

At a special meeting of the Cottesloe Town Council held on the 2<sup>nd</sup> December 2004 it was agreed to defer consideration of the application in order to:

- enable the owner to present revised plans that satisfied the Heritage Council's concerns,
- allow the Heritage Council to respond issues arising from the interim listing of the Cottesloe Beach Precinct, and
- allow the receipt and consideration of advice from the WA Planning Commission which was due to meet on 7<sup>th</sup> December 2004.

The advice of the Statutory Planning Committee of the WA Planning Commission was subsequently received on 8<sup>th</sup> December 2004 (Attachment 8 to the agenda).

After further discussions between the Heritage Council and the owner, amended drawings were lodged with the Town of Cottesloe on 13<sup>th</sup> December 2004 (Attachment 9 to the agenda) with full plans being received the following day.

The Heritage Council's advice in relation to the revised plans was received on 17<sup>th</sup> December 2004 (Attachment 2 to the agenda).

## **STAFF COMMENT**

The following comments are made:

### **1. Matters for Consideration under the Heritage Act**

The development site is on the State Register of Heritage Places. Under the Heritage Act Council cannot make a determination on the development application (under the local Town Planning Scheme or the Metropolitan Region Scheme) without the receipt and consideration of advice from the Heritage Council.

The Heritage Council advice appears at Attachment 2 to the agenda.

### **2. Matters for Consideration under the Metropolitan Region Scheme**

Council is required to consider the development proposal under the Metropolitan Region Scheme.

In making the determination under the Metropolitan Region Scheme, Council is required to have regard to any Statement of Planning Policies and clause 30 of the Metropolitan Region Scheme, which states the following:

*The Commission or a Local Authority exercising the powers of the Commission so delegated to it under the Scheme Act may consult with any authority that in the circumstances it thinks appropriate; and having regard to the purpose for which the land is zoned or reserved under the Scheme, the orderly and proper planning of the locality and the preservation of the amenities of the locality may, in respect*

*of that application for approval to commence development, refuse its approval or may grant its approval subject to such conditions if any as it may deem fit.*

Council, acting as the Western Australian Planning Commission, is required to consider the development application on a regional basis. It is required to have regard to the local authority Town Planning Scheme, but it is not bound by the Town Planning Scheme.

On a regional basis, Council is required to give consideration to the:

1. purpose of the zone under the Metropolitan Region Scheme (it is zoned Urban);
2. orderly and proper planning of the locality; and
3. preservation of the amenities of the locality.

Following the receipt of advice from the WA Planning Commission, Council is now in a position to make a better-informed decision in relation to the Metropolitan Region Scheme, using the powers delegated by the Western Australian Planning Commission.

#### **WA Planning Commission Advice**

The substance of the advice received from the Western Australian Planning Commission (Attachment 8 to the agenda) is that:

*“After considering the matter in terms of its policies and its Practice Note 1/2004 (copy attached), the general design principles contained in the proposed development are considered to be acceptable, subject to adequate controls being put in place to ensure that the accommodation remains available and centrally managed as short-term tourist accommodation and is not as permanent residential accommodation. Such controls should include maximum length-of stay-limits.*

*As the Hotel zone does not provide for permanent residential purposes, a greater variety of hotel room types and sizes needs to be provided.*

*From an urban design viewpoint, the Commission is concerned that the design as considered appears to be somewhat overpowering of the heritage building and would recommend that attention be given to this aspect. It is acknowledged that current discussions between the developer and the Heritage Council may result in amendments that would address this concern.”*

Attachment 8 to the agenda also includes *Planning Practice Note 1/2004* and it should be read in conjunction with the advice received from the WA Planning Commission.

In particular, Council’s attention is drawn to the information under the heading of *Location Criteria* on page 2 of the practice note and *Urban Design* on page 3. These two areas relate directly to the concerns expressed in the WA Planning Commission’s correspondence.

Notwithstanding the succinctness of the advice received from the WA Planning Commission, Council is also required to have regard to any other relevant Statement of Planning Policies.

**Statement of Planning Policy No. 1 – State Planning Framework Policy.**

Part B of the policy (State and Regional Provisions) provides that:

*The State Planning Framework includes Statements of Planning Policy prepared by the Commission under Section 5AA Town Planning and Development Act as well as....strategic policies... prepared from time to time and endorsed by the Commission...*

*Strategic policy statements deal with particular strategic planning issues and, in some cases, refine and expand upon aspects of a regional strategy. Strategic policies endorsed by the Commission are as follows...*

*...Coastal Planning and Development Policy – Draft 1996.*

Section 4.2 of the *Coastal Planning and Development Policy* considers the issue of tall buildings and structures and sets out suggested policies in considering developments over 12 metres in height. Policy 4.2.1 is reproduced below:

*4.2.1 Tall building and structures (above 12m) within coastal view sheds on the coast may be permitted where they have been justified in the context of an approved policy or plan or designated in a town planning scheme, and generally when the proposed development meets the following guidelines:*

- (i) is consistent with the visual amenity of the foreshore and should as far as possible not unduly affect views to and from the beaches;*
- (ii) maintains and enhances the coastal landscape character of the area as expressed in the dominant forms of the surrounding environment;*
- (iii) does not cause overshadowing of the beach, or increase wind velocities by means of the venturi effect;*
- (iv) takes account of the varying ability of portions of the coast to visually absorb change (e.g. height, building bulk, site-lines, visual amenity, scale, built form, materials, colours, site coverage, shadows and open space);*
- (v) maintains natural landscape, with the development of management plans to guide revegetation works and provision of facilities; and*
- (vi) provides for the visually co-ordinated design of structures, outdoor furniture, signs and utilities.*

When read together with the WA Planning Commission's *Practice Note 1/2004* (Attachment 8) both documents indicate the planning considerations that should be taken into account when considering the development application on the broader regional level.

**3. Matters for Consideration under the No. 2 Town Planning Scheme**

The following comments are made:

**(a) Legal Aspects**



Senior legal advice has been obtained in relation to the proposed development. As stated in the background section, Council has received two opinions that are at odds with each other. Council is also in receipt of a third Senior Counsel's opinion from Wayne Martin (QC) submitted by the applicant (Attachment 10 to the agenda) which affirms the opinion of Ken Martin (QC).

As the second opinion was made in full knowledge of the first opinion, and considering the submission of a third opinion which accords with the second opinion it is considered that the second opinion should be used as the basis for decision making.

That is, there is discretion to vary the standards and requirements of the Town Planning Scheme text on the basis that the work to be carried out is in relation to the structure listed in Schedule 1 of the Town Planning Scheme text.

In deciding whether or not to exercise that discretion, the second opinion stated the following:

Para 29

*"...In this stage of consideration, it seems to me that clause 6.2.3 does give the Council some discretion concerning what would otherwise be non-compliance with other provisions of the Scheme text. That is not to say that the fact of such non-compliance is rendered insignificant, or is to be ignored. On the contrary, these matters are highly material to the issue of the Council's approval \*(written consent). The critical distinction however, is that the exercise now becomes one of evaluation by the Council of the overall merits of the proposal as a whole – rather than the Council simply being compelled by the fact of non-compliance to reject the proposal.*

*In relation to the discretion to vary the development standards, like any exercise of discretion, Council is required to carefully consider the extent of those variations and the likely impact of those variations in terms of the orderly and proper planning of the locality and the preservation of the amenities of the area."*

**(b) Heritage**

The 1937 brick rendered façade of the Cottesloe Hotel is listed in Schedule 1 of the Town Planning Scheme text which is a list of *Places of Natural Beauty and Historic Buildings and Objects of Historical or Scientific Interest*.

Part VI of the Town Planning Scheme text therefore applies. The purpose of including places or properties on the list is to enable Council in preserving and conserving these properties, places or structures through the exercise of discretionary town planning controls.

It is only the 1937 brick rendered façade that is heritage listed, not the hotel or the site.

The Norfolk Island Pine trees in John Street are also listed in Schedule 1 of the Town Planning Scheme text.

The proposed development will result in a crossover for the southern car parking entry being constructed between two of the John Street Norfolk Island pine trees.

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The development also involves the excavation and construction of a basement along the John Street boundary.

These works have the potential to affect the western most pine tree, which is some 24m in height. An arboriculturalist was engaged to report on the impact of the proposed works and building on the heritage listed trees (Attachment 11 to the agenda).

**(c) Scheme Objectives – Hotel Zone**

The development site is located within the Hotel Zone and the objective for the Hotel Zone is shown below:

*The intention of the Hotel Zone is to control the use of hotels within the Scheme Area and to guide the further development or redevelopment of land within the Zone.*

A hotel is defined in the Town Planning Scheme text as meaning:

*“... land and buildings providing accommodation for the public the subject of a Hotel Licence granted under the provisions of the Liquor Act, 1970 (as amended);”*

In order to guide development within the Zone, the Scheme Text has specified certain matters which Council must consider when dealing with a development application in that Zone. Those matters are set out below:

In its consideration of applications to commence development the Council shall have regard to -

- the preservation of the foreshore as a primary marine recreation and tourist attraction where land within the Zone is adjacent to the foreshore;
- the social consequences of the effect of the size of bars, the number of patrons, the type of entertainment, the hours of operation, the effect of car parking and other related matters on the adjacent area that is essentially of a quiet residential nature;
- the integration of parking areas and vehicular access thereto, with total land usage so as to secure the most convenient, safe and efficient use of land;
- the traffic impact of any development;
- the preservation of privacy, views and quiet in nearby residential developments and areas;
- the effect of shadow on the foreshore and neighbouring properties;
- the effect of a development to impede or accelerate air flows;
- the amenity provisions and policies contained in Part V - General Provisions - of this Scheme.

**(d) Scheme Development Standards – Hotel Zone**

Clause 3.4.5(b) sets out the major development standards for the Hotel Zone. These controls and issues relating to non-compliance are discussed later in the report.

**(e) Other Standards and requirements of the Town Planning Scheme text**

Apart from those development standards identified in Clause 3.4.5 of the Town Planning Scheme text, Council is also required to consider the following:

Clause	Matter for consideration
5.1.2	Various amenity matters that Council is required to have regard to when considering the development application.
5.1.3	Likely impact on privacy of neighbouring developments
5.1.4	Maximum permitted height of retaining walls near a common boundary – 1.8m
5.1.5	Appearance and design of buildings
5.3(a)	Nil street setback - setback of buildings from site boundaries greater than 6.0m in height
5.5	Sets out minimum parking standards. Includes requirements for provision of cash-in-lieu for shortfall of parking
5.7	Controls relating to advertising

**4. Independent Assessment of the Application**

The application has been assessed by others in order to obtain independent comment on the proposal.

Mr Ken Adam has provided comments and advice in relation to the planning and design issues associated with the proposed development (Attachment 12 to the agenda).

Mr Gary Baverstock from Ecotect has commented on the overshadowing of the beachfront by the proposed development (Attachment 13 to the agenda). His report includes a comparison of the shadow impacts of heights at 12 metres and the original proposed height of the development.

The report does not consider the impact of overshadowing as it relates to the revised plans. Mr Baverstock was requested to review the modified plans in terms of what components of the development cause overshadowing of the beach and John Street. His review was presented to a Council briefing session on 20<sup>th</sup> December 2004.

Mr Ian Oldfield has provided comments and advice in relation to the planning and design issues with the proposed hotel development. A copy of Mr Oldfield's advice is attached (Attachment 14 to the agenda).

**5. Comments on Proposal****(a) Heritage Considerations**

Attachment 2 to the agenda relates.

**(b) Metropolitan Region Scheme Considerations**

The following comments are made in relation to the proposed development under the Metropolitan Region Scheme.

1. Purpose of Zone.

The proposed development is consistent with the Urban zoning of the site.

2. Orderly and Proper Planning

The issues are addressed as part of the consideration of matters under the Town Planning Scheme No. 2

3. Preservation of Amenity of Locality

These issues are addressed as part of the consideration of matters under Town Planning Scheme No. 2.

4. Short Stay Accommodation

The WAPC has recommended a greater variety of hotel room types and sizes and that permanent residential be excluded. This can be dealt with as a condition of approval and by requiring the development to be a "hotel".

5. Urban Design

The design in relation to the heritage façade has been dealt with by the Heritage Council. In addition there has been detailed advice by the Design Advisory Panel and a number of independent architects.

**(b) Town Planning Scheme No 2 Considerations**

The Scheme sets out a number of matters to be considered by Council when assessing a Hotel zone development application under Clause 3.4.5 of the Scheme Text.

These are discussed below:

***1. the preservation of the foreshore as a primary marine recreation and tourist attraction where land within the Zone is adjacent to the foreshore;***

The continued use of the site for hotel purposes will contribute to the preservation of the foreshore as a primary marine and tourist attraction. The definition of Hotel under the existing Town Planning Scheme makes reference to accommodation being provided and that accommodation being made available to the public.

In terms of public amenity, concern is expressed at the potential loss of short-term public accommodation to long-term private accommodation. Accommodation should be freely available to any visitor (tourist) to enjoy Cottesloe Beach and its environs, which is a very highly regarded local and regional facility.

This concern has been reinforced by the WA Planning Commission which wants controls

*“... put in place to ensure that the accommodation remains available and centrally managed as short-term tourist accommodation and is not used as permanent residential accommodation. Such controls should include maximum length-of stay-limits.*

In mixed use developments, there is a potential for conflict between the commercial and residential components with respect to noise and patron behaviour.

It is to be expected that users of long-term private accommodation at the hotel will have a lower threshold of tolerance as compared to short-term tourists if conflicts between uses occur.

In any event, building licence conditions will be required to ensure that a high degree of noise attenuation between the bar/café restaurant and accommodation components is carried out.

In terms of preserving the foreshore as a primary marine recreation and tourist attraction, the community will be better served by placing a maximum length-of stay-limit of three months on the development.

The owners have flagged their intention to seek a Town Planning Scheme amendment at a later date to allow a residential use in the Hotel zone. This should also be clearly discouraged at the outset by placing a maximum length-of stay-limit of three months in any 12-month period on the development and confirming the site's primary use as a hotel.

***2. the social consequences of the effect of the size of bars, the number of patrons, the type of entertainment, the hours of operation, the effect of car parking and other related matters on the adjacent area that is essentially of a quiet residential nature;***

The removal of the beer garden will have a major reduction in terms of the impact of anti-social behaviour in the area - particularly on weekends.

It should be noted that with the revised plans the amount of licensed floor space reduces by 107m<sup>2</sup> to 422m<sup>2</sup> with a corresponding decrease of approximately 100 patrons.

This will in turn reduce demands on car parking and assist in the preservation of the adjacent area which is essentially of a quiet residential nature.

**3. *the integration of parking areas and vehicular access thereto, with total land usage so as to secure the most convenient, safe and efficient use of land;***

The development proposes integrated parking and vehicular access. An independent review of parking and traffic has been prepared.

**4. *the traffic impact of any development;***

A traffic engineering report has been received from the developers (Attachment 15 to the agenda) and it indicates that there should be no adverse impacts caused by the new development in terms of traffic movement, volumes and effect on intersections. The report says that the proposed development is likely to improve traffic movements in the vicinity of the hotel.

This has been reviewed by consultants engaged by Council and they have agreed with those findings (Attachment 16 to the agenda).

**5. *the preservation of privacy, views and quiet in nearby residential developments and areas;***

The proposed development will have a detrimental impact on the privacy and views from some of the surrounding properties to varying degrees.

The scheme requires Council to have regard to the impact that development may have on privacy and views for any proposal up to the current height restriction of 12 metres. The current proposal will be increasing the height of the development above the current height limit of 12 metres to 20.3 metres - an increase of 8.3m.

**6. *the effect of shadow on the foreshore and neighbouring properties;***

The proposed development, based on the modelling provided by the applicant, will overshadow the beach at all times of the year at certain hours.

The applicant's modelling shows that during the summer solstice, the development will overshadow the beach from approximately 6:00am through to 6:40am. The equinox results in shadowing from 7:00am through to 7:30am. During winter, the shadow on the beach and grassed areas occurs from 8:00am through to approximately 9:50am.

In correspondence dated the 11 October 2004 the applicant's architect stated the following:

*"The overshadowing model has been submitted to Council. We are of the opinion that overshadowing in relation to the foreshore and neighbouring properties is of no concern with regard to this development. Should Council require further documentation with regard to shadow diagrams we would be pleased to provide these on request."*

Despite the assurances it is considered that there is a substantive issue to be addressed in relation to the impact that the proposed development will have on the beach and the surrounding area.

In a July 1987 draft report commissioned by the Town of Cottesloe on submissions to Cottesloe Town Planning Scheme 2 (extracts appear at Attachment 17 to the agenda) Martin Goff and Associates state that:

*“The (proposed) Scheme includes a plot ratio control of 1.2 but does not specify a height limit suggesting that height should be controlled by shadow impact on beaches and neighbouring properties...”*

*The Cottesloe Hotel is on a much smaller site and the shadow controls would severely limit the ability for redevelopment which would more generally be described as high rise rather than medium rise. It would seem from the majority of submissions lodged that ratepayers prefer to reduce the incentive for redevelopment rather than encourage new, better class facilities.*

*If height limits are imposed, redevelopment is still possible but less likely. An alternative involves major renovation. A further factor to be considered in relation to height control is the plot ratio and site coverage limits. It is most unlikely that a 2 and 3 storey development on 50% of a site could achieve the plot ratio of 1.2.*

*Currently there are no height restrictions at all within the Scheme and the new Scheme sought [sic] to rely on practical impacts rather than arbitrary height limits. Further it should be recognised that storey heights in hotels are generally grater [sic] than those on residential and other buildings. Any height control should be expressed in terms of metres as well as storeys and the Government’s policy of 12 metres is probably an appropriate measure...*

*It is recommended that sub-clause 3.4.5(v) be deleted and replaced by a provision stating that no building within the Hotel Zone shall exceed a height of 3 storeys above natural ground level, falling to a maximum of 2 storeys where the site abuts or is opposite residential development. It is also recommended that maximum plot ratio be reduced to 1.0 in recognition of the height limits.”*

Clause 3.4.5(v) of the scheme text currently reads as follows:

*No hotel or related building shall be constructed so that it exceeds-*

- (a) a height of 12 metres...*
- (b) three storeys inclusive of above ground parking decks; or*
- (c) excepting the Eric Street frontage of lot 2, Cnr Eric Street and Marine Parade, 2 storeys adjacent to or opposite residential development.*

It is clearly evident that the primary purpose of the 12 metre height limit is to control shadow impacts on beaches and neighbouring properties through the imposition of an arbitrary and conservative height limit – even if it reduces the likelihood of redevelopment and is less than “practical”.

The modelling undertaken by Ecotect shows that the 12 metre height limit significantly minimises shadow impacts on beaches and neighbouring properties.

If Council is to exercise its discretion in relation to the height of the proposed development it should do so in the knowledge that the height limit is of considerable importance to the community based on

- (i) the height limit's origins and rationale,
- (ii) submissions received to date on the development application,
- (iii) Council resolutions over the last 12 months reaffirming the height limit controls.
- (iv) 369 "tear-off" slips canvassed by Cr Morgan and received during the public submission period indicating that 344 people (93%) were against allowing the height of new buildings on the beachfront exceeding 12 metres/3 storeys.

Mr Baverstock has reviewed the modified plans in terms of what components of the development cause overshadowing of the beach and John Street. The review was presented to Council at a briefing session held on the 20<sup>th</sup> December 2004.

While it can be argued that the shadows cast by the Indiana Tearooms, the surrounding Norfolk Island Pines, the edge of the No.1 carpark and buildings further to the north set a precedent for overshadowing of the beach, an opposing view would be that the precedent should not be followed in the interests of proper and orderly planning and the preservation of public amenity.

In other words, existing problems should not be compounded by poor planning decisions.

***7. the effect of a development to impede or accelerate air flows;***

The Design Advisory Panel considered there would be no adverse impacts of the development on air flow.

***8. the amenity provisions and policies contained in Part V - General Provisions - of this Scheme.***

These issues are discussed later in this report.

**(b) Development Standards**

The development standards contained within the town planning scheme text are very restrictive. The plot ratio, site coverage and building heights seek to control development along the beachfront so as to ensure any new development will fit into the beachside/village like nature that currently exists along this section of Marine Parade, without adversely impacting the beach and surrounding areas.

The proposed development seeks to vary those standards to a considerable degree. It is the consequences of these variations which may contribute to the detrimental impact that the proposed development will have on the beachfront and surrounding properties.



The town planning scheme seeks to limit the impact of a development through various controls, with the primary controls being as follows:

Control	Scheme	Proposed	Difference
Plot Ratio	1.0 (3336m <sup>2</sup> )	2.63 (8790m <sup>2</sup> )	1.63 (5,451m <sup>2</sup> )
Site Coverage	0.5 (1669m <sup>2</sup> )	0.92 (3067m <sup>2</sup> )	0.42 (1,398m <sup>2</sup> )
Building Height	12m	20.35	8.35

These three development controls provide control over the height and amount of open space of the development. The variations are substantial and therefore need to be carefully considered by Council.

The consequence of these primary controls will increase the impact on the area in the following ways:

Overshadowing:

The increased height will result in shadowing of the beachfront every day at certain hours throughout the year based on the modelling carried out by the applicants and Ecotect.

Council must consider the consequences of the differences in the impact between the overshadowing of the beachfront on the existing 12 metre height limit and the proposed height of development at 20.35m (measured from the main entrance along Marine Parade).

Council should then determine whether the overshadowing impacts of the proposal are reasonable given the circumstances.

It should be noted that the existing hotel is approximately 10 metres high from the main entrance to the primary roof ridge line and as a result has no adverse shadowing effects associated with its current configuration.

Impact on views from the beach and to the beach

The building bulk of the development is substantially greater than that permitted by the Scheme. The combination of plot ratio, site coverage, setbacks and height controls building bulk.

Any increase in these controls above the scheme provisions requires Council to carefully consider the differential impact on the amenity of the beachfront and the surrounding properties.

Views are an amenity consideration. While there is no legal entitlement to views, when the Council is called upon to exercise its discretion in relation to existing height limits, the effect on views becomes a proper planning consideration.

The view from the shoreline east towards the Cottesloe Hotel reveals that the building ridge lines are fairly constant. It is the primarily the roofs of the buildings that are seen and there are no dominant buildings that project above the other buildings.

The increased height proposed for the Cottesloe Beach Hotel site will impact on the view shed from the beach towards to the Cottesloe Beach Hotel while acknowledging that the stepping back of the new façade above the existing hotel serves to reduce any impact.

The increased height and bulk will have an impact on some of the surrounding residential properties in terms of loss of ocean views.

The apartments in Warnham Road to the north of the proposed development would not receive any greater diminution of views than if the proposal were to conform with scheme requirements.

Views from the *Constantia* building are likely to receive the greatest impact but this is somewhat limited by its distance from the development.

While any disruption to views will likely impact on the amenity of surrounding properties, it is the extent of these view impacts and the number of affected properties which must be considered by the Council.

#### Impact on John Street

The variation to the controls based on the proposed development will impact on John Street and the residential properties on the southern side of John Street. This can be seen from the overshadowing modelling provided by the applicant and Ecotect. This modelling demonstrates that John Street and the front gardens of the properties to the southern side of John Street are overshadowed during certain times in winter.

The principle of protecting the south side of the east-west streets running off Marine Parade is a proper planning consideration in terms of amenity and proper and orderly planning for the benefit of the community. These sites are important as key alfresco areas in terms of receiving northern sun and associated passive heating during the cooler months.

The increased height and bulk of the development will result in the shadowing of John Street during the winter solstice period. The John Street footpath is used by many pedestrians and has the potential to be used by the commercial operators of the café on the corner of Marine Parade and John Street for alfresco dining.

At the winter solstice, this area will be in shadow from early morning through to about 11:30am when the shadow from the proposed development starts moving away from the corner of Marine Parade and John Street. It is not until about 12:30pm that the shadowing effect of the proposed development abates completely.

The shadowing effect then continues along John Street affecting residential properties further to the east.

The proposed development has a detrimental impact on the operations of No. 94 Marine Parade during certain times in winter which is a direct consequence of the increased height and bulk of the proposed development.

Effect on No. 6 John Street

No. 6 John Street is a group of 17 units. Approval was granted in the 1980's for this development. A previous search of the records revealed that the development was approved for residential purposes with no restrictions on the occupation of those units. Therefore, they are treated as multiple dwellings.

This site abuts the eastern boundary of the Cottesloe Hotel site. The complex consists of two rows of units, with each row fronting either John Street or Warnham Road. The space between the two rows of dwellings is used for access to the parking spaces. A swimming pool is located next to the common boundary of the two sites.

The Town Planning Scheme allows the building to be built up to the street boundary, provided that the building is not higher than 6.0m. The Scheme then allows Council to require a greater setback to other boundaries having considered the zoning and current use of adjoining properties.

Whilst supporting the development, an objection was lodged by three property owners of the site (who own 12 units out of the 17 units) in relation to the adverse impact that they believed the proposed development would have on their property. The concern related to:

- impact of parapet wall;
- loss of view;
- loss of afternoon sun;
- shadowing of pool;

The development on No. 6 John Street abuts the common boundary and varies in height from 6.0m (existing wall abutting swimming pool is solid for half the height and glass the remaining height) up to the peak of the gable end of the residential dwellings of 11.5m. The applicants are proposing a boundary wall along the full length of the common boundary, varying in height from 8.5m to 12.5m. The building is then set back in 5.5 to 7.0m and increases to the full height of the development (17.8m measured from the ground level of No. 6 John Street).

The height and length of the proposed boundary wall and the implications for the height of the development and overshadowing are issues that need to be addressed by the applicant however the applicant advises that the current proposal is likely to have no greater detrimental effect on No. 6 John Street than if it were to conform to current developmental controls.

Ecotect has also provided advice into a reasonable sun angle from a westerly direction for 6 John Street. This advice was presented to Council at a briefing held on the 21<sup>st</sup> December 2004.

#### On-site Parking

The development does not comply with the parking standards set out in the Town of Cottesloe Town Planning Scheme No. 2. The applicant's traffic consultants have sought to substantiate a variation to the parking standards (Attachment 15).

The Town Planning Scheme standards for licensed Hotels and taverns require:

*"1 space to every bedroom and 2 space to every 2 sq metres of floor or ground area open to the public for consumption of liquor provided that in the case of areas used as lounges and beer gardens and used solely for seated customers the ratio may be reduced to 1 space for every 4 sq metres of floor or ground area. If provision is made for holding conventions or functions, Council shall require an additional space for every 4 sq metres that the convention function room is designed to accommodate. Where Council has granted approval for the use of a portion of a licensed hotel or tavern for entertainment purposes, parking shall be provided at the ratio of 1 space to 2 sq metres of gross floor area of the portion subject to the issue of an "Entertainment Permit" under the Liquor Act 1970 (as amended)."*

The applicants are seeking to provide:

- a maximum of two car parking spaces for each dwelling unit plus one (77);
- 10 for staff and residential visitors; and
- no on-site parking for visitors to the restaurant/bar areas.

The net effect is that the proposed development will provide a total of 87 on-site car parking spaces, rather than the 233 required by the Town Planning Scheme thus leaving a shortfall of 146 bays.

When compared to the current shortfall of 892 bays, (currently there is no on-site car parking) this will result in an overall improvement to the current parking situation of 803 bays.

Council has commenced a parking and traffic study to:

- consider the consequences of lack of on-site parking spaces for those developments along the beachfront, the demand for increased intensity of development; the continuing growth of Perth's population and the increased pressure by the general public wanting to access Cottesloe beaches;
- review existing parking standards for inclusion in the proposed No. 3 Town Planning Scheme; and
- consider options to address the demand for parking in the future along the beachfront.

State Government regulations prevent the charging of parking of fees west of Broome Street which means that residents rather than users will ultimately be responsible for the costs of addressing current parking problems.

The current Town Planning Scheme contains provisions dealing with the amount of on-site parking to be provided. Alternatively, Council can accept cash-in-lieu for the provision of parking which can be applied to the resolution of current parking problems.

The Valuer General's Office (VGO) has provided a land valuation for the purposes of determining the cash-in-lieu payment. The value has been determined by the VGO to be \$5,100 per square metre. Based on a parking space and a shared reversing area (on a flat site with no decked parking and with the space being 2.5m x 5.5m plus 3.0m for reversing), the value is \$108,375 per parking space.

The development is short by 146 spaces and based on scheme requirements, the cash-in-lieu payment should be \$15,822,750.

The modified parking standard presented by the applicant's traffic engineers claims a shortage of 74 bays which generates a cash-in-lieu payment of \$8,019,750.

The applicant has advised that the proposed development cannot sustain a cash-in-lieu payment of this magnitude and still remain financially viable. The financial viability of the planning proposal is not a proper planning consideration.

The issue therefore reduces to how much of the car parking requirement Council is prepared to waive in terms of preserving and conserving the façade of the hotel.

The improvement in the current situation is a key consideration which will improve the amenity of the locality, 37% of the required parking will be provided on site. This means car parking in the surrounding area will still be required. It is therefore considered reasonable to gain a contribution to the upgrading of car parking in the area and the general amenity. Of note TPS No.2 does not specifically provide for this approach.

#### Cottesloe Beachfront Development Objectives

The *Cottesloe Beachfront Development Objectives* (Attachment 5) document is the most current expression of the Council's policy in relation to development within the beachfront zone, defined as *"those private properties and Council reserves adjacent to and including Marine Parade between Forrest Street and Grant Street"*.

A draft of the document was adopted by Council in December, 2003, and released for public comment with submissions closing in May 2004.

Following consideration of public submissions and the outcomes of Special Elector's meetings the Council resolved in June 2004 to:

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- affirm the height provisions of Town Planning Scheme no. 2;
- delete sections of the draft *Cottesloe Beachfront Development Objectives* Report relating to increased heights above 12m; and
- to request the staff to develop a revised Report.

The revised objectives were formally adopted at the September 2004 meeting of Council, with the inclusion of an additional point.

The relevant built form objectives set out in the document include:

- continuity of built edge on the front boundary along Marine Parade, with active frontages;
- a height constraint on the street edge, with potential for some higher development behind;
- new development to respond sympathetically to adjoining existing development and to limit overshadowing; and
- new development to be low rise at street frontage onto Marine Parade.

These objectives have been commented on elsewhere in this report and by the Design Advisory Panel.

The Beachfront Development Objectives represent a policy of Council and can be used as a consideration in determining the application. Of note however is the objectives do not form part of TPS No.2 and are not a formal policy under TPS No.2.

#### Amenity Considerations under Clause 5.1.2

These matters, which include such matters as consideration of impact on views, building bulk, access to higher standards of daylight and sunshine, etc, have been generally covered in the report.

#### Design Advisory Panel

A Design Advisory Panel meeting was held on 23 November 2004.

Some members of the Design Advisory Panel indicated significant concerns with respect to:

- adverse impact on the amenity of John Street
- adverse impact on the amenity of Cottesloe Beach
- the use is residential and not hotel
- no upgrading of the amenity of the public domain
- overshadowing impacts on the surrounding area
- precedents the development would set
- excessive height, bulk and scale
- impact on views from surrounding areas

The applicants have verbally advised that they would like the opportunity to meet with Council to discuss the potential upgrading of the public domain by way of a cash contribution of \$500,000.

Formal written advice confirming this offer should be to hand by the time of the meeting.

## **CONCLUSION**

The proposed development will result in benefits to the community in terms of reduced parking demand and reduction in antisocial behaviour associated with seasonal use of the hotel by large crowds. However, there are very important consequences associated with this proposed development that must be carefully considered by Council.

Due to heritage provisions contained within the Town Planning Scheme text, discretion exists for Council to vary the development standards of the Town Planning Scheme. The issue is whether the goal of preserving and conserving the 1937 brick rendered façade warrants the extent of concessions and variations sought by the applicant. Council is required to carefully consider the extent of those variations and the likely impact of those variations in terms of the orderly and proper planning of the locality and the preservation of the amenities of the area.

In other words, Council is required to carefully consider the extent of those variations and their consequences in terms of good town planning practice, when coming to a conclusion on the proposed development.

As Council is also the decision maker in relation to the Metropolitan Region Scheme, Council is required to carefully consider the impact of the proposed development on the regional Park and Recreation Reserve and take into account the considerations under Clause 30 of the Metropolitan Region Scheme and any Statement of Planning Policies and other relevant documents.

## **OFFICER RECOMMENDATION**

Option (A)

That Council Approve the application for alterations and additions to the Cottesloe Beach Hotel at 104 Marine Parade as detailed on the plans received on the 14 December 2004, in accordance with Part VI of the Town of Cottesloe Town Planning Scheme No.2, Part VII of the Town of Cottesloe Town Planning Scheme No.2; and the Metropolitan Region Scheme, acting under delegated authority from the Western Australian Planning Commission, subject to:

- (1) The applicant paying a cash-in-lieu payment, prior to the issue of the Building Licence, the equivalent of 146 carparking spaces as set out in accordance with the provisions of Clause 5.5.4 of the Town planning Scheme Text; with
- (2) The cash-in-lieu value being determined by the Valuer General's Office;
- (3) The value of the cash-in-lieu determined by the Value General's Office being referred to Council for final approval;

- (4) The cost of determining the value of the cash-in-lieu payment being borne by the applicant.
- (5) The development being operated as a Hotel in accordance with the provisions of the Town of Cottesloe Town Planning Scheme No.2 and managed centrally.
- (6) The development not being used for permanent residents with a maximum length of stay of 3 months in any 12 month period.
- (7) Detailed plans being submitted to the satisfaction of the Manager of Development Services that address:
  - a) a greater setback from John Street to ensure reduced overshadowing of the southern side of John Street;
  - b) stepping back of the western façade to ensure no overshadowing of Cottesloe beach in winter;
  - c) stepping back or a reduction in height of the eastern façade to reduce the impacts on 6 John Street;
  - d) preservation of the Norfolk Pines in John Street; and
  - e) the requirements of the Health and Engineering Departments of the Town of Cottesloe.
- (8) Detailed plans being submitted that address Town of Cottesloe Health and Engineering Departments' requirements to the satisfaction of the Manager of Development Services.
- (9) Compliance with and implementation of the conditions required by the Heritage Council of W.A.
- (10) Entering into a legal agreement with the Town of Cottesloe for contribution towards upgrading of the public domain.

**OPTION (B)**

That Council Refuse the application for alterations and additions to the Cottesloe Beach Hotel at 104 Marine Parade as detailed on the plans received on the 14 December 2004, in accordance with Part VI of the Town of Cottesloe Town Planning Scheme No.2, Part VII of the Town of Cottesloe Town Planning Scheme No.2; and the Metropolitan Region Scheme, acting under delegated authority from the Western Australian Planning Commission, for the following reasons:

- (1) The proposal manifestly exceeds the statutory height requirements under TPS 2;
- (2) Would unduly affect views to and from Cottesloe Beach;
- (3) The proposal manifestly overshadows the beach and neighbouring properties, and this is significantly more than would be the case if the proposal did not exceed 12 metres;



- 4) Would have a detrimental impact on views from surrounding properties;
- 5) Would negatively affect the adjoining properties and the streetscape due to the proposed building height and bulk;
- 6) The proposal manifestly fails to conform with the parking standards in TPS 2;
- 7) The proposal manifestly exceeds the plot ratio standards in TPS 2;
- 8) The proposal manifestly exceeds the site coverage standards in TPS 2;
- 9) The preservation of the facade does not warrant the manifestly excessive concessions sought by the applicant
- 10) The amenity of the neighbouring area would be unreasonably diminished and the area's orderly and proper planning negatively impacted, if such concessions or variations were granted.
- 11) The manifestly excessive concessions or variation to the factors set out above are not sufficiently offset in terms of a reduction in:
  - a) anti-social behaviour associated with removal of the existing beer garden;
  - b) the existing lack of on-site parking for the site;
  - c) any potential contribution to tourism and hospitality facilities in the area;
  - d) any conformity with aspects of the Council's Beachfront Development Objectives; and
  - e) any potential cash in lieu of car parking.

**AMENDMENT**

Moved Cr Walsh, seconded Cr Strzina

That the following be added to Option B :

- (11) Would have an adverse effect on the Norfolk Island pine trees in John Street.

Carried 11/0

**AMENDMENT**

Moved Cr Cunningham, seconded Cr Robertson

That the following be added to Option B :

- (12) The proposed development does not satisfy the requirements of the WA Planning Commission in terms of the variety of short term accommodation.

Carried 11/0

**10.1 COUNCIL RESOLUTION**

Moved Mayor Rowell, seconded Cr Miller

**That Council Refuse the application for alterations and additions to the Cottesloe Beach Hotel at 104 Marine Parade as detailed on the plans received on the 14 December 2004, in accordance with Part VI of the Town of Cottesloe \Town Planning Scheme No.2, Part VII of the Town of Cottesloe Town Planning Scheme No.2; and the Metropolitan Region Scheme, acting under delegated authority from the Western Australian Planning Commission, for the following reasons:**

- (1) The proposal manifestly exceeds the statutory height requirements under TPS 2;**
- (2) Would unduly affect views to and from Cottesloe Beach;**
- (3) The proposal manifestly overshadows the beach and neighbouring properties, and this is significantly more than would be the case if the proposal did not exceed 12 metres;**
- 4) Would have a detrimental impact on views from surrounding properties;**
- 5) Would negatively affect the adjoining properties and the streetscape due to the proposed building height and bulk;**
- 6) The proposal manifestly fails to conform with the parking standards in TPS 2;**
- 7) The proposal manifestly exceeds the plot ratio standards in TPS 2;**
- 8) The proposal manifestly exceeds the site coverage standards in TPS 2;**
- 9) The preservation of the facade does not warrant the manifestly excessive concessions sought by the applicant**
- 10) The amenity of the neighbouring area would be unreasonably diminished and the area's orderly and proper planning negatively impacted, if such concessions or variations were granted.**
- 11) Would have an adverse effect on the Norfolk Island pine trees in John Street.**
- 12) The proposed development does not satisfy the requirements of the WA Planning Commission in terms of the variety of short term accommodation.**
- 13) The manifestly excessive concessions or variation to the factors set out above are not sufficiently offset in terms of a reduction in:**

- a) anti-social behaviour associated with removal of the existing beer garden;
- b) the existing lack of on-site parking for the site;
- c) any potential contribution to tourism and hospitality facilities in the area;
- d) any conformity with aspects of the Council's Beachfront Development Objectives; and
- e) any potential cash in lieu of car parking;

Carried 8/3

The vote was recorded:

For: Cr Cunningham, Cr Miller, Cr Morgan, Cr Robertson, Cr Sheppard, Cr Strzina, Cr Utting, Cr Walsh.  
Against: Mayor Rowell, Cr Furlong, Cr Jeanes.

**11 ELECTED MEMBERS' MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**

Nil.

**12 MEETING CLOSURE**

The Mayor declared the meeting closed at 8.45pm.

CONFIRMED: MAYOR ..... DATE: ...../...../.....